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Attorneys for Defendants
Alderwoods Group, Inc. and Service Corporation
International

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Deborah Prise, et al., on behalf of
themselves and all other employees
similarly situated,

Plaintiffs,

v.

Alderwoods Group, Inc., et al.,
Defendants.

Case No.

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION
FROM STATE COURT
[28 U.S.C. §§ 1332, 1441 (B) AND
1446]**

1
2 TO THE CLERK OF THE ABOVE ENTITLED COURT:

3 PLEASE TAKE NOTICE THAT Alderwoods Group, Inc. ("Alderwoods")
4 and Service Corporation International ("SCI") (collectively "Defendants"),
5 Defendants in the above-titled action, hereby remove this matter to the United
6 States District Court for the Northern District of California, pursuant to 28 U.S.C.
7 §§ 1332, 1441 and 1446. The grounds for removal are as follows:

8 **Compliance with Statutory Requirements**

9
10 1. On or about July 9, 2007, Plaintiffs filed a Class Action Complaint in
11 the Superior Court of the State of California for the County of Alameda, Case No.
12 RG 07334642. ("Complaint") In their Complaint, Plaintiffs assert claims for
13 violation of the California Labor Code, Failure to Maintain Proper Records
14 (California Labor Code), Breach of Contract (under the laws of 38 states and
15 territories), violation of State Wage and Hour Laws (under the laws of 38 states and
16 territories), Unjust Enrichment (under the laws of 38 states and territories), Fraud
17 and Deceit (under the laws of 38 states and territories), Quantum Meruit (under the
18 laws of 38 states and territories), Negligent Misrepresentation (under the laws of 38
19 states and territories), Negligence (under the laws of 38 states and territories), and
20 Unfair Competition (California Business and Professional Code § 17200 et seq.).
21 Attached as Exhibit A is a true and correct copy of the Complaint.

22 2. Plaintiffs served Defendants with the Summons ("Summons") and a
23 copy of the amended Class Action Complaint on or after September 5, 2007.
24 Defendants' removal of this action is timely because Defendants are removing this
25 matter within 30 days of being formally served with a Summons and a copy of the
26 Amended Complaint. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti*
27 *Pipe Stringing, Inc.*, 526 U.S. 344 (1999). Attached as Exhibit B are true and
28 correct copies of the Summons, civil case cover sheet, ADR information package,

1 notice of hearing for a complex determination and case management conference,
2 minutes and order of September 7, 2007.

3 3. Attached as Exhibit C is a true and correct copy of the Amended Class
4 Action Complaint received by the Defendants. *See* 28 U.S.C. § 1446(a). To the
5 Defendants' knowledge, there are no other process, pleadings, or orders in this
6 action than those set forth herein.

7 4. Pursuant to 28 U.S.C. § 1446(d), Defendants promptly will provide
8 written notice of removal of the action to Plaintiffs, and promptly will file a copy of
9 this Notice of Removal with the Clerk of the Superior Court of the State of
10 California, County of Alameda.

11 **Intradistrict Assignment**

12
13 5. Plaintiffs filed this case in the Superior Court of California, County of
14 Alameda; therefore, this case properly may be removed to the Oakland or San
15 Francisco Divisions of the Northern District of California. *See* 28 U.S.C. §
16 1441(a); Civ. L. R. 3-2 (c), (d), 3-5(b).

17 **Jurisdiction**

18
19 6. This Court has original jurisdiction over this matter pursuant to 28
20 U.S.C. § 1332(d) (as amended by the Class Action Fairness Act of 2005, Pub. L.
21 No. 109-2, 119 Stat. 14 ("CAFA")). Under Section 1332(d), federal courts have
22 original diversity jurisdiction over a class action whenever: (1) "any member of a
23 [putative] class of plaintiffs is a citizen of a State different from any defendant," 28
24 U.S.C. § 1332(d)(2)(A), and (2) "the matter in controversy exceeds the sum or
25 value of \$5,000,000, exclusive of interest and costs," 28 U.S.C. § 1332(d)(2). Both
26 requirements are satisfied in this case.

27 7. In this matter, diversity of citizenship exists because the Defendants
28 and at least one proposed class member are citizens of different states. *See* 28

1 U.S.C. § 1332(c)(1). Alderwoods is a corporation incorporated under the laws of
2 the State of Delaware and has its principal place of business in Ohio. SCI is a
3 corporation incorporated under the laws of the State of Texas and has its principal
4 place of business in that State. Plaintiff Deborah Prise was a citizen of
5 Pennsylvania at the time Plaintiffs filed this action, and she still is.

6 8. Further, though Defendants concede neither liability on Plaintiffs'
7 claims nor the propriety or breadth of the class as alleged by Plaintiffs, the
8 Complaint places in controversy a sum greater than \$5,000,000. *See* 28 U.S.C.
9 § 1332(d)(2). Plaintiffs claims defendants had a policy and practice of willfully not
10 compensating them for all of their regular hours worked and overtime hours worked
11 in excess of 8 hours a day and 40 hours a week. Amended Complaint, ¶¶ 54, 56.
12 The Complaint does not allege a specific dollar amount in damages, but Plaintiffs
13 seek unpaid wages, liquidated damages, compensatory damages, consequential
14 damages, punitive damages and attorneys' fees on behalf of themselves and each of
15 the purported class members. Amended Complaint, Prayer 20:25-26:27.

16 9. Plaintiffs' claims in this case establish an amount in controversy that
17 exceeds \$5,000,000. Specifically, as of September 2007, while Defendant SCI is a
18 holding company with no employees, Defendants and/or their affiliates employ
19 more than 15,000 non-exempt employees in the United States. *See* Declaration of
20 Judith Marshall ("Marshall Dec."), attached as Exhibit D, at ¶ 2. Assuming an
21 average hourly wage of \$16.00 – by comparison, Plaintiffs Deborah Prise's and
22 Heather Rady's most recent non-exempt wages were \$18.60 and \$17, respectively –
23 these individuals would need to average only 14 hours of overtime during the
24 relevant statutory periods to meet the minimum amount in controversy.

25 10. Moreover, the amount in controversy in this matter is substantially
26 higher than \$5,000,000. As noted, the information discussed in the preceding
27 paragraph relates only to current employees. Thus, the calculations do not include
28 claims by former employees of Defendants and/or their affiliates included within

1 Plaintiffs' putative class definition, nor does it include potential damages related to
2 Plaintiffs' claims for penalties and other types of damages under the laws of 38
3 states and territories or any of the other claims set forth in the Amended Complaint.
4 Amended Compl., Ex. A, at ¶¶ 53, 87, 93, 99, 106, 115, 123, 129, and 133.

5 11. In asserting the basis for diversity jurisdiction, Defendants do not
6 concede that Plaintiffs are entitled to overtime pay or that Plaintiffs ever worked
7 more than forty hours per workweek or more than eight hours per day. Nor do the
8 Defendants concede that any or all non-exempt employees are class members or
9 that any class could be certified.

10 WHEREFORE, the above-titled action is hereby removed to this Court from
11 the Superior Court of the State of California, County of Alameda.

12 Dated: October 5, 2007

13 By: 
14

15 Steven H. Gurnee
16 David M. Daniels
17 Nicholas P. Forestiere

18 Attorneys for Defendant
19 ALDERWOODS GROUP, INC. AND
20 SERVICE CORPORATION
21 INTERNATIONAL
22
23
24
25
26
27
28

EXHIBIT A



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 COUNTY OF ALAMEDA

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 RUSSELL NICHOLSON BOWEN, TAMMY
 J. BOWERMAN, OSWALD R. BOYKINS,

Case No. **RG07884042**
CLASS ACTION
 COMPLAINT-CLASS ACTION
 JURY TRIAL DEMANDED

1 GREGORY BRADLEY, ROBERT S.
2 BRANUM, JR., MICHELE BREINDEL,
3 HARRY W. BRITT III, MARC BROOKS,
4 WILLIAM B. BROUGH, LINDA BROWN,
5 THOMAS A. BROWN, JENNIFER
6 BRUYETTE, CLARKE BURKLE, RUTH
7 BURKS, LEN R. BURTON-HARDIN,
8 JERRY W. BUSH, MICHAEL S. BUTLER,
9 MATTHEW BYRNE, LINCOLN CABRERA,
10 ANTHONY CALABRESE, CLAYTON L.
11 CALLAWAY, PETER D.A. CAMERON,
12 LAWRENCE F. CAMP, JILL D.
13 CAMPBELL, BRADLEY A. CARDINI,
14 MICHAEL CARRY, RAYMOND CARSON,
15 SHANE M. CARSWELL, SCOTT CARVER,
16 GABRIEL T. CASAUS, SEAN J.
17 CAVALIERE, MICHELLE CAVANAUGH,
18 DUANE CHAMBERS, DEBBIE K.
19 CHATMAN (BRANDT), JAMES RAY
20 CHEATHAM, VALDEN CHRISTENSEN,
21 JOHNNY W. COLEMAN, MICHAEL R.
22 COMBS, JOSETTE A. CONSIGLIO-
23 HOUGH, DANIEL COOK, JASON COSTIN,
24 SHANE B. COUTINHO, GARY A.
25 COWGER, WILLIAM COZART JR., DIANE
26 CRAIG, GARY D. CRAVEN, LESLIE A.
27 CREECH, THOMAS A. CREECH, JAMES
28 CROUCH, PEREY R. DAIGLE, TERRELL
WARD DAVIS, WANDA K. DAVIS, KELLY
DEITZEL, ROY J. DENTLINGER, STEVEN
DETSCHNER, JESUS M. DIAZ DIAZ,
JAMES J. DICKSON, JEFFERY A. DIGGS,
NANETTE DIMOND, EFREW L.
DOMINQUEZ, LOUIS DOMINQUEZ,
REBECCA J. DONAHUE, BENJAMIN E.
DRABING, CLAYTON DRAGGOO, JOHN
DROULLARD, ROSALIN DUGDALE-
NORTON, MARC A. DUMONT, SCOTT J.
ECKERT, ALAN EDWARDS,
CHRSTIOPHER S. ELLIS, DEBRA
ELMORE-NESHEIM, CRAIG EMMICK,
STEPHEN ESCOBAR, FRANKLIN
ESSARY, ANTHONY FALLETTA, BRIAN
FARMER, HEIDI FERGUSON, JOHN R.
FERGUSON, BRIAN M. FIELD, MARY
FISHER, RICHARD FLEMING, DARIN D.
FORAN, ELIZABETH FOURNIER, STEVEN
FRAZIER, STEVEN L. FRAZIER, STEPHEN
FREI, STROTHER T. FULCHER JR.,
DWIGHT GAHM, ANGELA GARCIA,
BENJAMIN GARDNER, ELAINE M.
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1 GOAD, JUAN GODINEZ, BOLIVIA
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4 GROOMS, DAVID A. GUDZINAS, SCOTT
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7 MURRAY M. HAM, RICHK HAMILTON,
8 DANIEL P. HANOLON JR., DOUGLAS S.
9 HARPOLD, RONNIE HARRELL, LLOYD
10 W. HARRIS, THOMAS H. HARRIS SR.,
11 TED B. HASKELL, LISA HATCH, DON
12 HATZ, LOUIS HAUSLER, HEIDI HEIL,
13 DOCK HINES, BERNARD M. HIRREL,
14 LOAN HOANG, MARION HOLLEY,
15 PHILLIP J. HOLLIS, DARRYL HOLMAN,
16 STANLEY M. HORN, BIANCA HORTON,
17 GARY LANE HUDSON II, WILLIAM
18 HUDSON III, TOM R. HUGHES, ROGER H.
19 HUGO, DOUGLAS E. HUTTER, DANIAL R.
20 HYATT, FRANK JACKSON, JAN S.
21 JACOB, BOBBY JARRETT, DAVE R.
22 JARRETT, JOHNNY W. JOHNSON, JULIUS
23 E. JOHNSON, WILLIAM JOHNSON,
24 WILLIAM C. JOHNSTON, MICHAEL D.
25 JOINES, KEISHA E. JONES, ROBERT G.
26 JONES, BARBARA JOY, KENNIE
27 KARHINER, ANGELA KEATH, JOHN
28 KEATH, EILEEN NIX KENNEDY,
RANDALL L. KIMBRO, BRIAN A. KING,
WILTON KING, JOHNNIE KIRKLING,
EDDIE KIRKPATRICK, HENRY A. KLEIN,
BETTY KNIGHT, ROBERT KOLESKI,
CHRISTINE KOORNDYK, MICHAEL D.
KOPERA, RICHARD T. KUHTA, WILLIAM
L. FUSCO, NICKOL LADD, BRIGETTE
LAFauci, SANDRA LANG, RONALD
LANGLEY, STEVE GILL LANNOM,
MICHAEL LANZA, KENNETH J.
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LEE, KAREN LIMON, JOE E. LINDLEY,
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LOPEZ BRITO, DANIEL LUTON, EMILY
MADDEN, SCOTT MADDOX, JESUS
MALDUNADO, DAVID E. MANES, LUPE
MARTINEZ, BRENDA KAY MASSAQUOI,
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MCDONALD, LARRY A. MCGEE,
THOMAS MCLAUGHLIN, WILLIAM
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MEDINA, JOSE B. MEDINA FONSECA,
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1 MOHR, DUANE MOORE, CRAIG R.
2 MORGAN, ELIZABETH MORRIS,
3 DOUGLAS M. MOSTYN, JERRY
4 MURRAY, JAMES W. NOLAND, EDWARD
5 OAKES, SEAN J. OBERSKI, ARI B.
6 OBERSTEIN, ANN O'CANTO, DAVID
7 JAMES ORD, SMILTH P. OURSO,
8 MICHAEL GORDON OVANDO, ROBERT
9 PARRYMORE, RUPERT PATRICK,
10 DONALD PAYNE, MONICA D. PAYNE,
11 DAVID PERLMAN, JOHN PETERS,
12 RICHARD E. PETERSEN, MARK
13 PETRATIS, TOMMY W. PETTY,
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22 JEANINE L. RICO, DAVID BRUCE
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24 ELEANOR RIGGIO, RICHARD L. RILEY,
25 LOYAL RITTER, MARK RITTER, ISMAEL
26 RIVERA BURGÓS, ANDY RIVERA
27 NIEVES, LANDON ROBERTSON, CHRIS
28 ROBERTO, DENNIS ROBERTSON,
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RUBINO, MARIAN RUE, SCOTT R. RUFF,
ED RUSNAK, KENNETH J.
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SANTIAGO SALAZAR III, RICHARD
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RICHARD SIECKMANN, DANIEL SIFERD,
ROBERT W. SIMMONS, CHRISTINE
SIMPSON, PHILLIP W. SISK, DANNY J.
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SMITH, MONECIA SMITH, PAUL STEVEN
SMITH, JONATHAN SORBEL, REX
SORROW, JODY PAUL SPIESE, JAMES D.
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3 JEFFERY N. SUTTON, JOSEPH G.
4 TAFOYA JR., STEPHEN TAKESIAN,
5 VICKI LYNN TAYLOR, MARK TELESKA,
6 JEREMIE R. THIBAUT, MARILYN
7 THOMAS, TIMOTHY L. THUESON,
8 STEVEN TIBBITTS, PHILIP RYAN
9 TILLMAN, TODD R. TRACY, WILLIAM D.
10 TROUTMAN, MATTHEW TWISS, PAULS.
11 ULOTH, EVELYN M. UNDERWOOD,
12 JAMES "RAY" UNDERWOOD, VAUGHN
13 VANZANT, EDWIN R. VARGAS
14 GONZALEZ, H. ALLISON VOGT, KEITH P.
15 VONQUALEN, FRED E. WALKER, GAYLE
16 WALKER, ERIC WALLAND, RICKY
17 WALTER, SCOTT J. WALTERS,
18 SHANNON E. WALTERS, STACEY
19 WEINSTEIN, DENISE WESTBROOKS,
20 JAMES WHALEY, GEORGE THOMAS
21 WHITE, KEVIN WHITE, RAYMOND E.
22 WHITE JR., CHAD A. WICKHAM, BARRY
23 WIEN, TIMOTHY E. WILBUR, JASON
24 WORMAN, JOSEPH WORTH WILSON JR.,
25 TINA WINEINGER, ROBERT WOLF,
26 GEORGE L. WOOD, HAROLD E. WOOD,
27 CLAUDINE T. YOUNG, EDWARD SCOTT
28 ZABORSKI, BENJAMIN ZAPATA, DANIEL
P ZERTUCHE, on behalf of themselves and all
other employees similarly situated,

Plaintiffs,

v.

ALDERWOODS GROUP, INC. and
SERVICE CORPORATION
INTERNATIONAL,

Defendants.

CLASS ACTION COMPLAINT

AND NOW come Plaintiffs, on behalf of themselves and all others similarly situated, by and through their attorneys, Rosen, Bien & Galvan, LLP, Dolin, Thomas & Solomon LLP and Margolis Edelstein, and file the following Class Action Complaint:

I. INTRODUCTION

1. This is a proceeding for declaratory relief and monetary damages to redress the deprivation of rights secured to Named Plaintiffs individually, as well as all other employees similarly situated, under the laws of California and other laws of the various States in which defendants do business.

2. Plaintiffs state law claims asserted herein were previously dismissed from the United States District Court for the Western District of Pennsylvania on or about June 8, 2007 and have been tolled since that time pursuant to 28 U.S.C. § 1367.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over defendants because the defendants conduct business in this State.

4. Venue is appropriate in this Court since the defendants do business in this County.

III. CLASS ACTION ALLEGATIONS

5. The claims arising under the state wage laws set forth above are properly maintainable as a class action under Cal. Civ. Proc. § 382.

6. The class consists of current and former employees of defendants who were suffered or permitted to work time for which they were not compensated, including time for which premium pay was owed but not paid.

7. The class size is believed to be over 50 employees.

8. The Named Plaintiffs will adequately represent the interests of the class members because they are similarly situated to the class members and their claims are typical of, and concurrent to, the claims of the other class members.

1 9. There are no known conflicts of interest between the Named Plaintiffs and the
2 other class members.

3 10. The class counsel, Rosen, Bien & Galvan, LLP, Dolin, Thomas & Solomon LLP
4 and Margolis Edelstein, are qualified and able to litigate the class members' claims.

5 11. The class counsel is experienced in employment litigation, and its attorneys are
6 experienced in class action litigation, including class actions arising under federal and state
7 wage and hour laws.

8 12. Common questions of law and fact predominate in this action because the claims
9 of all class members are based on whether defendants' practice of not paying nonexempt
10 employees for all hours worked and/or statutory overtime for hours worked over 40 per week
11 violates California state law and the state laws of the various other states in which defendants
12 do business.

13 **IV. PARTIES**

14 **A. Defendants**

15 13. At all relevant times, Defendants Alderwoods Group, Inc. ("Alderwoods") and
16 Service Corporation International ("SCI") has suffered or permitted the plaintiffs to perform
17 work for them.

18 *Alderwoods and SCI are Liable for Alderwoods's Employees*

19 14. At all relevant times, Defendants Alderwoods and SCI have been employers of
20 plaintiffs in this action.

21 15. Upon information and belief, Alderwoods, through its shareholders, has adopted
22 the merger agreement by and between Alderwoods and Defendant Service Corporation
23 International ("SCI") (collectively, "Merged Entities" or "Defendants").

24 16. Upon information and belief, the Merged Entities, under the merger agreement,
25 continue business operations in substantially the same form as before the merger.

26 17. Upon information and belief, the Merged Entities, under the merger agreement,
27 continue to use substantially the same workforce as before the merger, with substantially the
28 same supervisors and same working conditions.

1 18. Upon information and belief, the Merged Entities, under the merger agreement,
2 provide essentially the same services as before the merger and use the same facilities,
3 equipment and method of proving services.

4 19. Upon information and belief, thus, SCI is a successor-in-interest to Defendant
5 Alderwoods's liability.

6 20. Upon information and belief, the Merged Entities, under the merger agreement,
7 operate interrelated business operations.

8 21. Upon information and belief, the Merged Entities, exercise central control of
9 labor relations.

10 22. Upon information and belief, the Merged Entities operate under common
11 management.

12 23. Upon information and belief, the Merged Entities have common ownership and
13 financial control.

14 24. In light of the economic realities of the Merged Entities' enterprise, defendants
15 are joint employers of plaintiffs for purposes of the federal and state laws.

16 25. Collectively, all of defendants named herein and all of their funeral service
17 locations comprise a single, integrated enterprise, as they perform related activities through
18 common control for a common business purpose.

19 26. Upon information and belief, SCI, under the merger agreement, exercises
20 complete dominion and control over Alderwoods and their funeral service locations.

21 27. SCI, Alderwoods and their funeral service locations constitute alter egos of the
22 other.

23 28. At all relevant times, defendants have suffered or permitted plaintiffs to perform
24 work for them.

25 29. At all relevant times, Alderwoods's and Service Corporation Internationals'
26 funeral service locations have been plaintiffs' employer.

27 30. The Class Members are jointly employed by Alderwoods and SCI and their
28 funeral service locations.

1 31. Business operations of the funeral service locations are centrally controlled by
2 Alderwoods and SCI.

3 32. At all relevant times, Alderwoods and SCI maintained centralized control of
4 employment relations.

5 33. At all relevant times, the human resource functions of the funeral service
6 locations report directly or indirectly to Alderwoods and SCI.

7 34. In addition to centralized control of employment relations, Alderwoods and SCI
8 exercises common management of their various funeral service locations.

9 35. Further, Alderwoods and SCI own all of their funeral service locations and
10 exercise financial control over the business operations of those locations.

11 36. Alderwoods is a corporation with its headquarters being at 311 Elms Street, Suite
12 1000, Cincinnati, Ohio 45202 and does business in the State of California.

13 37. Service Corporation International is a corporation with its headquarters being at
14 1929 Allen Parkway, Houston, Texas 77019 and does business in the State of California.

15 38. Defendants are enterprises engaged in interstate commerce with an annual gross
16 volume of sales not less than \$500,000.

17 ***SCI Maintains Separate Locations and Employs Additional Employees***

18 39. In addition, SCI operates other locations, either directly or through its affiliates,
19 separate from the Alderwoods locations and therefore is the employer of additional plaintiffs.

20 40. Upon information and belief, SCI exercises complete dominion and control over
21 the additional funeral service locations. SCI's affiliates are merely agents or instrumentalities
22 of SCI.

23 41. SCI, its affiliates and their funeral service locations constitute alter egos of the
24 other.

25 42. At all relevant times, SCI and its affiliates have suffered or permitted plaintiffs to
26 perform work for them.

27 43. Business operations of the funeral service locations are centrally controlled by
28 SCI.

1 44. At all relevant times, SCI maintains centralized control of employment relations.

2 45. At all relevant times, the human resource functions of the funeral service
3 locations report directly or indirectly to SCI.

4 46. In addition to centralized control of employment relations, SCI exercises
5 common management of its various funeral service locations.

6 47. Further, SCI owns all of its funeral service locations and exercises financial
7 control over the business operations of those locations.

8 **B. Plaintiffs**

9 *Named Plaintiffs*

10 48. The Named Plaintiffs are current or former employees of the defendants.

11 *Class and Collective Action Members*

12 49. The class and collective action members ("Class Members") are those employees
13 and former employees of defendants similarly situated to Named Plaintiffs who were suffered
14 or permitted to work by defendants and not paid their regular or statutorily required rate of pay
15 for all hours worked.

16 **V. FACTUAL BACKGROUND**

17 50. Named Plaintiffs and the other Class Members worked for defendants and were
18 not paid their regular or statutorily required rate of pay for all hours worked and were not paid
19 at time and one-half for hours they worked over 40 in a week.

20 51. Defendants' policy and/or practice was to not compensate Named Plaintiffs and
21 Class Members for work it suffered or permitted the Named Plaintiffs and Class Members to
22 perform.

23 52. Defendants knew plaintiffs were supposed to receive such wages, however,
24 defendants willfully failed to pay for all hours when Named Plaintiffs and Class Members
25 worked.

26 53. Defendants' practice is to be deliberately indifferent to these violations of the
27 statutory overtime requirements.

28 54. The failure to pay overtime is willful.

1 55. Examples of defendants' policies and practices to deprive the Named Plaintiffs
2 and Class Members of their earned wages and wage premiums are set forth below:

- 3 a. **Subclass A:** Defendants implemented a "Community Work Policy." Under
4 the policy, defendants suffered or permitted their employees to perform
5 "Community Work" so as to increase revenues for defendants. Defendants
6 did not compensate the employees for such time spent in Community Work in
7 furtherance of the employer's business under the "Community Work Policy."
- 8 b. **Subclass B:** Defendants implemented an "On Call Pay Policy." Under the
9 policy, employees were suffered or permitted to perform work by handling
10 calls and other work related issues after normal business hours, but
11 defendants would not compensate employees for work performed outside the
12 regular workday, off-site from the funeral home.
- 13 c. **Subclass C:** Defendants policy required that certain hourly employees train
14 for and become licensed insurance agents. Defendants did not pay for the
15 training, test taking and continuing education requirements for those positions
16 despite suffering or permitting employees to perform such work.
- 17 d. **Subclass D:** Defendants implemented a "Pre-Needs Appointment Policy."
18 Defendants suffered or permitted employees to meet with clients to discuss
19 pre-need purchases. To the degree that such appointments were beyond the
20 employees' schedule, the employees were suffered or permitted to continue
21 the appointments, but were not to be paid for such time worked under the
22 "Pre-Needs Appointment Policy." Defendants' management would
23 sometimes attempt to justify this policy on the grounds that the employee
24 would likely receive a commission if the client purchased a pre-needs
25 product.
- 26 e. **Subclass E:** Defendants implemented a "Meal Break Deduction Policy."
27 Under the policy, defendants no longer paid for lunch breaks. Defendants
28 did, however, suffer and permit its employees to perform work during such
meal breaks, but pursuant to defendant's "Meal Break Deduction Policy"
time spent on meal "breaks" was still to be deducted from the employee's pay
even when defendants suffered or permitted work to be performed during
such "breaks."
- f. **Subclass F:** Defendants implemented a "Pre-Approval for Overtime Pay
Policy." Under this policy, defendants only permitted payments for overtime
if the overtime was pre-approved. Defendants suffered or permitted their
employees to work overtime and therefore, the employees were entitled to
overtime payments. However, defendants refused to make the legally
required payments because the time was not "pre-approved" as required
under the "Pre-Approval for Overtime Pay Policy."

1
2 g. **Subclass G:** Defendants implemented an "Unrecorded Work Time Policy."
3 Under this policy, defendants suffered or permitted plaintiffs to perform
4 work, but directed that such work not be recorded. Defendants then refused
5 to pay for the time worked under the "Unrecorded Work Time Policy"
6 because, even though defendants knew that such time had been worked, it had
7 not been "recorded."

8 h. **Subclass H:** Defendants policy was to not include all remuneration (such as
9 bonuses and commissions) in the calculation of the plaintiffs' overtime.
10

11 56. Defendants also failed to make, keep and preserve adequate and accurate records
12 of the employment of Named Plaintiffs concerning their wages, hours and other conditions of
13 employment.
14

15 57. More specifically, the records kept by defendants failed to adequately and
16 accurately disclose among other things, hours worked each work day, the total hours worked
17 each work week and/or the total overtime compensation for each work week.
18

19
20 **COUNT I**
21 **CALIFORNIA LABOR LAWS**

22 58. The preceding paragraphs are incorporated herein as if fully set forth herein.

23 59. Defendants willfully violated their obligations under California law, including
24 the California Labor Code, and are liable to plaintiffs.
25

26 **COUNT II**
27 **FAILURE TO MAINTAIN PROPER RECORDS**

28 60. The preceding paragraphs are incorporated herein as if fully set forth herein.

61. Defendants violated provisions of the California Labor Code by failing to make,
keep, and preserve adequate and accurate records of the employment of Named Plaintiffs
concerning their wages, hours and other conditions of employment; more specifically, the
records kept by defendants failed to adequately and accurately disclose among other things,

1 hours worked each work day, the total hours worked each work week, and/or the total overtime
2 compensation for each work week and are liable to plaintiffs.

3 **COUNT III**
4 **BREACH OF CONTRACT**

5 62. Plaintiffs reallege the above paragraphs as if fully restated herein.

6 63. Defendants willfully violated their obligations under the state laws of Alabama,
7 Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho,
8 Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota,
9 Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North
10 Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina,
11 Tennessee, Texas, Virginia, Washington, and West Virginia and are liable to plaintiffs.

12 **COUNT IV**
13 **STATE WAGE AND HOUR LAWS**

14 64. Plaintiffs reallege the above paragraphs as if fully restated herein.

15 65. Defendants willfully violated their obligations under the wage laws of the states
16 in which defendants do business including; Pennsylvania Wage Law including, but not limited
17 to, PMWA and PWPC; Alaska Law including, but not limited to, the Alaska Wage and Hour
18 Act; Arizona Wage Law; Arkansas Wage Law including, but not limited to, the Arkansas
19 Minimum Wage Act; Colorado Wage Law; Connecticut Wage Law; Illinois Wage Law;
20 Indiana Wage Law; Kansas Law including, but not limited to, the Kansas Minimum Wage and
21 Maximum Hours Act; Maryland Wage Law; Massachusetts Wage Law; Michigan Wage Law;
22 Minnesota Fair Labor Standards Act; Montana Wage Law; Nebraska Wage Law; Nevada
23 Wage Law; New Hampshire Wage Law including, but not limited to, New Hampshire
24 Minimum Wage Law; New Mexico Wage Law including, but not limited to, New Mexico
25 Minimum Wage Law; New York Labor Law; North Carolina Law including, but not limited
26 to, the North Carolina Wage and Hour Act; Ohio Wage Law; Oregon Wage Law; Puerto Rico
27 Law including, but not limited to, the Puerto Rico Working Hours and Days Act; Rhode Island
28

1 Wage Law; Washington Wage Law; and West Virginia Wage Law and are therefore liable to
2 plaintiffs.

3 **COUNT V**
4 **UNJUST ENRICHMENT**

5 66. Plaintiffs reallege the above paragraphs as if fully restated herein.

6 67. Defendants willfully violated their obligations and have been unjustly enriched to
7 the determinant of plaintiffs and others similarly situated for worked performed for defendants
8 under the common laws and state laws of Alabama, Alaska, Arizona, Arkansas, California,
9 Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana,
10 Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada,
11 New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon,
12 Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Virginia,
13 Washington, and West Virginia and are liable to plaintiffs.

14 **COUNT VI**
15 **FRAUD AND DECEIT**

16 68. Plaintiffs reallege the above paragraphs as if fully restated herein.

17 69. Defendants willfully violated its obligations by committing fraud against
18 plaintiffs and others similarly situated under the common laws and the state laws of Alabama,
19 Alaska, Arizona, Arkansas, California (including the California Unfair Competition Law,
20 California Business and Professions § 17200), Colorado, Connecticut, Florida, Georgia, Idaho,
21 Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota,
22 Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North
23 Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina,
24 Tennessee, Texas, Virginia, Washington, and West Virginia and are liable to plaintiffs.

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COUNT VII
QUANTUM MERUIT

70. Plaintiffs reallege the above paragraphs as if fully restated herein.

71. Defendants willfully violated their obligations by failing to pay plaintiffs for the reasonable value of the services performed by plaintiffs for defendants under the common laws and the state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia and are liable to plaintiffs under quantum meruit.

COUNT VIII
NEGLIGENT MISREPRESENTATION

72. Plaintiffs reallege the above paragraphs as if fully restated herein.

73. Defendants willfully violated their obligations under the common laws and the state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia by misrepresenting to plaintiffs that they would be fully compensated for all services performed and are liable to plaintiffs.

COUNT IX
NEGLIGENCE

74. Plaintiffs reallege the above paragraphs as if fully restated herein.

75. Defendants willfully violated their obligations under the common laws and the state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan,

1 Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New
2 York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island,
3 South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia by negligently
4 failing to properly compensate plaintiffs and are liable to plaintiffs.

5 **COUNT X**
6 **UNFAIR COMPETITION LAW**

7 76. Plaintiffs reallege the above paragraphs as if fully restated herein.

8 77. Further, defendants failure to pay plaintiffs for all time worked constitutes unfair
9 competition and unlawful, unfair, and fraudulent business acts and practices in violation of
10 California Business and Professional Code § 17200, *et seq.*

11 78. The conduct of defendants in failing to pay plaintiffs for all time worked
12 constitutes and was intended to constitute unfair competition and unlawful unfair and
13 fraudulent business acts and practices within the meaning of California Business and
14 Professional Code § 17200, *et seq.*

15 79. Defendants also violated California's Unfair Competition Act by violating the
16 California Labor Code.

17 80. As a result of defendants' violations of California Business and Professional
18 Code § 17200, *et seq.*, defendants have unjustly enriched themselves at the expense of
19 plaintiffs.

20 81. To prevent their unjust enrichment, defendants should be required, pursuant to
21 California Business and Professional Code §§ 17203 and 17204 to disgorge their illegal gains
22 for purpose of making full restitution to all injured plaintiffs. Defendants should also be
23 permanently enjoined from continuing their violations of California Business and Professional
24 Code § 17200, *et seq.*

25 82. Defendants willfully violated their obligations under the California Unfair
26 Competition Law (Bus. & Prof. Code § 17200, *et seq.*) and are liable to plaintiffs.

1 **WHEREFORE**, plaintiffs demand judgment against defendants in their favor and that
2 they be given the following relief:

- 3 (a) an order preliminarily and permanently restraining defendants from engaging in
4 the aforementioned pay violations;
5 (b) an award of the value of plaintiffs' unpaid wages;
6 (c) liquidated, compensatory, consequential and punitive damages;
7 (d) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred
8 in vindicating plaintiffs' rights;
9 (e) an award of pre- and post-judgment interest; and
10 (f) such other and further legal or equitable relief as this Court deems to be just and
11 appropriate.

12 **JURY DEMAND**

13 Plaintiffs demand a jury to hear and decide all issues of fact.

14 Respectfully Submitted,

15 ROSEN, BIEN & GALVAN, LLP

16 Date: July 9, 2007

17 By:

18 *Maria V. Morris*
19 Maria V. Morris, State Bar No. 223903
20 Sanford Jay Rosen, State Bar No. 62566
21 Lori E. Rifkin, State Bar No. 244081
22 315 Montgomery Street, Tenth Floor
23 San Francisco, CA 94104
24 Telephone: (415) 433-6830

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27 693 East Avenue
28 Rochester, NY 14607
 Telephone: (585) 272-0540

 MARGOLIS EDELSTEIN
 Charles Saul, State Bar No. 19938
 525 William Penn Place, Suite 3300
 Pittsburgh, PA 15219
 Telephone: (412) 281-4256
 Attorneys for Plaintiffs

EXHIBIT B



SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
SERVICE CORPORATION
INTERNATIONAL and
ALDERWOODS GROUP, INC.,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED ALAMEDA COUNTY
SEP -5 2007
CLERK OF SUPERIOR COURT
BY *Alphonse Davis*
DEPUTY

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

WILLIAM HELM, DEBORAH PRISE, HEATHER P. RADY, [see Complaint and Appendices for a listing of plaintiffs] et al., on behalf of themselves and all other employees and former employees similarly situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Alameda
René C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA, 94612

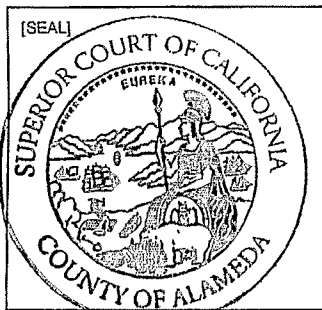
CASE NUMBER:
(Número del Caso): RG07334642

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Sanford Jay Rosen
Rosen, Bien & Galvan, LLP
315 Montgomery Street, 10th Floor
San Francisco, CA 94104
(415) 433-6830

DATE: September 5, 2007
(Fecha) 5 2007

Clerk, by *Alphonse Davis*, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).




NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):


4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Maria V. Morris (223903) Rosen, Bien & Galvan, LLP 315 Montgomery Street, 10th Floor San Francisco, CA 94104 TELEPHONE NO.: (415) 433-6830 FAX NO.: (415) 433-7104 ATTORNEY FOR (Name): Plaintiffs		FOR  *5719732* FILED ALAMEDA COUNTY JUL 09 2007 CLERK OF SUPERIOR COURT By <u>[Signature]</u> Deputy		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: 1225 Fallon St. CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: René C. Davidson				
CASE NAME: Prise, et al v. Alderwoods Group, Inc.				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 5px;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width: 33%; padding: 5px;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="width: 33%; padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>			CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: RC07284642 JUDGE: DEPT:				

Items 1-5 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 10
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
 Date: July 9, 2007
 Maria V. Morris (223903)
 (TYPE OR PRINT NAME)
- 
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**To Plaintiffs and Others Filing First Papers**

If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

**ALTERNATIVE DISPUTE RESOLUTION
INFORMATION PACKAGE
Effective April 15, 2005**

Instructions to Plaintiff / Cross-Complainant

In all general civil cases filed in the trial courts after June 30, 2001, the plaintiff is required to serve a copy of this ADR information package on each defendant.

California Rules of Court, Rule 201.9 (Excerpt)

(a) Each court must make available to the plaintiff, at the time of filing of the complaint, an Alternative Dispute Resolution (ADR) information package that includes, at a minimum, all of the following:

- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes . . .
- (2) Information about the ADR programs available in that court . . .
- (3) In counties that are participating in the Dispute Resolution Programs Act (DRPA), information about the availability of local dispute resolution programs funded under the DRPA . . .
- (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) Court may make package available on Web site . . .

(c) The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR information package on any new parties to the action along with the cross-complaint.

GENERAL INFORMATION ABOUT ADR

Introduction to Alternative Dispute Resolution

Did you know that most civil lawsuits settle without a trial? And did you know that there are a number of ways to resolve civil disputes without having to sue somebody? These alternatives to a lawsuit are known as alternative dispute resolution (also called ADR). The most common forms of ADR are mediation, arbitration, and neutral evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. In mediation, for example, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through court-connected and community dispute resolution programs and private neutrals.

Advantages of Alternative Dispute Resolution

ADR can have a number of advantages over a lawsuit:

- **ADR can be speedier.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money.** Court costs, attorney fees, and expert witness fees can be saved.
- **ADR can permit more participation.** With ADR, the parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- **ADR can be flexible.** The parties can choose the ADR process that is best for them.
- **ADR can be cooperative.** In mediation, for example, the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, cheaper, and can create an atmosphere in which the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads. For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute instead of filing a lawsuit. Even when a lawsuit has been filed, ADR can be used before the parties' positions harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of Alternative Dispute Resolution

ADR may not be suitable for every dispute.

If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure and review for legal error by an appellate court.

There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

The neutral may charge a fee for his or her services.

If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Lawsuits must be brought within specified periods of time, known as statutes of limitations. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

Three Common Types of Alternative Dispute Resolution

This section describes the forms of ADR most often found in the California state courts and discusses when each may be right for a dispute.

Mediation

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved; the parties do.

Mediation is a cooperative process in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other where at least one party loses. Mediation normally leads to better relations between the parties and to resolutions that hold up. For example, mediation has been very successful in family disputes, particularly with child custody and visitation.

Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation also is very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to let out their feelings and find out how they each see things.

Mediation may not be a good idea when one party is unwilling to discuss a resolution or when one party has been a victim of the other or has unequal bargaining power in the mediation. However, mediation can be successful for victims seeking restitution from offenders. A mediator can meet with the parties separately when there has been violence between them.

Arbitration

In arbitration, a neutral (the arbitrator) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. Arbitration normally is more informal and much speedier and less expensive than a lawsuit. Often a case that may take a week to try in court can be heard by an arbitrator in a matter of hours, because evidence can be submitted by documents (like medical reports and bills and business records) rather than by testimony.

There are two kinds of arbitration in California: (1) Private arbitration, by agreement of the parties involved in the dispute, takes place outside of the courts and is normally binding. In most cases "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an appeal of that decision. (2) "Judicial arbitration" takes place within the court process and is not binding unless the parties agree at the outset to be bound. A party to this kind of arbitration who does not like a judicial arbitration award may file a request for trial with the court within a specified time. However, if that party does not do better in the trial than in arbitration, he or she may have to pay a penalty.

Arbitration is best for cases where the parties want a decision without the expense of a trial. Arbitration may be better than mediation when the parties have no relationship except for the dispute.

Arbitration may not be a good idea when the parties want to decide on the outcome of their dispute themselves.

Neutral Evaluation

In evaluation, a neutral (the evaluator) gives an opinion on the strengths and weaknesses of each party's evidence and arguments and makes an evaluation of the case. Each party gets a chance to present his or her side and hear the other side. This may lead to a settlement or at least help the parties prepare to resolve the dispute later on. If the neutral evaluation does not resolve the dispute, the parties may go to court or try another form of ADR.

Neutral evaluation, like mediation, can come early in the dispute and save time and money.

Neutral evaluation is most effective when a party has an unrealistic view of the dispute, when the only real issue is what the case is worth, or when there are technical or scientific questions to be worked out.

Neutral evaluation may not be a good idea when it is too soon to tell what the case is worth or if the dispute is about something besides money, like a neighbor playing loud music late at night.

Other Types of Alternative Dispute Resolution

There are several other types of ADR besides mediation, arbitration, and neutral evaluation. Some of these are conciliation, settlement conferences, fact-finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR methods. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

The selection of a neutral is an important decision. There is no legal requirement that the neutral be licensed or hold any particular certificate. However, some programs have established qualification requirements for neutrals. You may wish to inquire about the qualifications of any neutral you are considering.

Agreements reached through ADR normally are put in writing by the neutral and, if the parties wish, may become binding contracts that can be enforced by a judge.

You may wish to seek the advice of an attorney about your legal rights and other matters relating to the dispute.

Help Finding an Alternative Dispute Resolution Provider in Your Community

To locate a dispute resolution program or private neutral in your community:

- **Visit the Court's Web site.** The Alameda County Superior Court maintains a list of court-connected mediators, neutral evaluators, and private arbitrators at <http://www.co.alameda.ca.us/courts/adr.htm>.
- **Contact the Small Claims Court Legal Advisor.** The small claims legal advisor for Alameda County is located at the Wiley W. Manuel Courthouse, Self-Help Center. The phone number is 510-268-7665.
- **Visit the California Department of Consumer Affairs' Web site.** The Department of Consumer Affairs (also called the DCA) has posted a list of conflict resolution programs throughout the state. The list can be found at http://www.dca.ca.gov/r_r/mediati1.htm

You can also call the Department of Consumer Affairs, Consumer Information Center, at 800-952-5210.

- **Contact your local bar association.** You can find a list of local bar associations in California on the State Bar Web site at <http://www.calbar.org/2lin/2bar.htm>.

If you cannot find a bar association for your area on the State Bar Web site, check the yellow pages of your telephone book under "Associations."

- **Look in the yellow pages of your telephone book under "Arbitrators" or "Mediators."**
- **Automotive Repair, Smog Check:** The **California Bureau of Automotive Repair** (also known as BAR) offers a free mediation service for consumers who are dissatisfied with an auto repair or a smog check, or who dispute an invoice for such services. BAR registers and regulates California automotive repair facilities and licenses smog, lamp, and brake inspection stations. Learn more at <http://smogcheck.ca.gov/smogweb/geninfo/otherinfo/mediation.htm> or call 800-952-5210.
- **Attorney Fees:** The **State Bar of California** administers a mandatory fee arbitration program to resolve attorney fee disputes between lawyers and their clients. The program is an informal, low-cost forum and is mandatory for a lawyer if a client requests it. Mediation of attorney fees disputes may also be available in some areas of California. Learn more at <http://www.calbar.org/2bar/3arb/3arbndx.htm> or call 415-538-2020.

DISPUTE RESOLUTION PROGRAMS IN ALAMEDA COUNTY

Mediation Services

222278 Redwood Road, Castro Valley, CA 94546

Phone: (510) 733-4940 fax: (510) 733-4945

Provides a panel of mediators to assist in the process of reaching an agreement in the areas of Neighborhood Disputes, Child Custody, Divorce, Parent/Teel Conflicts, Home Owners Association, Business, Real Estate, Employer/Employee, and Fremont Rent Increases.

East Bay Community Mediation

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Phone: (510) 548-2377 fax: (510) 548-4051

EBCM is a community-based mediation program created by the union of Berkeley Dispute Resolution Service and Conciliation Forums of Oakland. EBCM offers counseling on options and approaches to resolving a dispute, mediation, large-group conflict facilitation, and conflict resolution skills workshops.

Catholic Charities of the East Bay: Oakland – Main Office

433 Jefferson Street, Oakland, CA 94607

Phone: (510) 768-3100 fax: (510) 451-6998

Mediators are responsible for mediation sessions involving the youth, victim and family members to work towards a mutually agreeable restitution agreement. Also provide free workshops in anger management and mediation.

Center for Community Dispute Settlement

1789 Barcelona Street, Livermore, CA 94550

Phone: (925) 373-1035

Provides services in Tri-Valley for all of Alameda County. Program goals are to increase the number of court cases resolved, mediating small claims cases four days per week, and training youth in listening and conflict resolution skills.

California Lawyers for the Arts: Oakland Office

1212 Broadway Street, Suite 837, Oakland, CA 94612

Phone: (510) 444-6351 fax: (510) 444-6352

This program increases the resolution of arts related disputes such as artistic control, ownership of intellectual property, credit for work performed or produced and contract issues, through the use of alternative dispute resolution. It also increases the capacity to provide services for counseling, conciliation and administration of mediation, arbitration and meeting facilitation.

**ALAMEDA COUNTY SUPERIOR COURT
ADR PROGRAM**

ADR Program Administrator

Pursuant to California Rule of Court 1580.3, the presiding judge of the Superior Court of California, County of Alameda has designated Benjamin D. Stough, Berkeley Trial Court Administrator, to serve as ADR program administrator.

A Plaintiff may elect, the parties may stipulate or a judge may refer a case to Judicial Arbitration. The Judicial Arbitration Program Coordinator may be contacted at (510) 670-6646.

The Judicial Arbitration Process

Appointment of Arbitrator (must be appointed within 30 days after referral per CRC 1605).

- ⇒ Parties mailed list of five names from which to select. (List mailed within 5-10 business days after receipt of referral).
- ⇒ Each party may reject one of the names listed (10 calendar days per *CRC 1605a*)
- ⇒ The administrator randomly appoints the arbitrators from the names remaining on the list. If only one remains then is deemed appointed.

Assignment of Case (CRC 1605a(4))

- ⇒ Within 15 days of notice of the appointment, the arbitrator shall contact parties in writing about time, date, and place of the hearing. The parties shall receive at least 30 days notice prior to the hearing.

Hearings (CRC 1611)

- ⇒ Shall be scheduled so as to be completed not less than 35 days nor more than 90 days from the date the arbitrator was assigned. For good cause shown, the case may be continued an additional 90 days by the Case Management Judge.

Award of Arbitrator (CRC 1615b & c)

- ⇒ Arbitrator must file an award within 10 days after conclusion of the arbitration hearing. The court may allow 20 additional days upon application of arbitrator in cases of unusual length or complexity.
- ⇒ Within 30 days of the filing of the award the parties may file a Request for Trial de Novo. The clerk shall enter the award as a judgment after 30 days provided a Trial de Novo has not been filed.

Return of Case to Court

- ⇒ Upon Filing of Trial de Novo the action is returned to Case Management Judge for further proceedings. (*CRC 1616 & Local Rule 6.4*)
- ⇒ If Trial de Novo is not filed then judgment is entered and the Case Management Judge is notified (*CRC 1615c & Local Rule 6.6*)
- ⇒ If parties indicate a settlement then case is returned to Case Management Judge and case is continued 45 days for an Order to Show Cause RE filing a dismissal. (*Local Rule 6.6*)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

<input type="checkbox"/> Allen E. Broussard Justice Center 600 Washington Street, Oakland, CA 94707	<input type="checkbox"/> Berkeley Courthouse 2000 Center Street, 2 nd Fl., Berkeley, CA 94704	<input type="checkbox"/> George E. McDonald Hall of Justice 2233 Shoreline Drive, Alameda, CA 94501
<input type="checkbox"/> Fremont Hall of Justice 39439 Paseo Padre Parkway, Fremont, CA 94538	<input type="checkbox"/> Gale/Schenone Hall of Justice 5672 Stoneridge Drive, Pleasanton, CA 94588	<input type="checkbox"/> Wiley W. Manuel Courthouse 661 Washington Street, Oakland, CA 94607
<input type="checkbox"/> Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	<input type="checkbox"/> René C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	

Case No.: _____

Plaintiff

vs.

STIPULATION FOR ALTERNATIVE
DISPUTE RESOLUTION (ADR)

Defendant

The parties by and through their attorneys of record hereby stipulate to submit the within
controversy to the following Alternative Dispute Resolution process:

ORDER

The foregoing stipulation having been read and considered, and good cause appearing, now therefore,

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the matter be set for Order to Show Cause Hearing RE:

Dismissal on _____ at _____ a.m./p.m. in Department _____

Dated: _____

JUDGE OF THE SUPERIOR COURT

(SEAL)

[Rosen, Bien & Asaro LLP Attn: Rosen, Sanford Jay 315 Montgomery Street 10th Floor L San Francisco, CA 94104	[Alderwoods Group, Inc.
---	--------------------------

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Prise <div style="text-align: right;">Plaintiff/Petitioner(s)</div> <div style="text-align: center;">VS.</div> Alderwoods Group, Inc. <div style="text-align: right;">Defendant/Respondent(s)</div> <div style="text-align: center;">(Abbreviated Title)</div>	No. <u>RG07334642</u> <p style="text-align: center;">NOTICE OF HEARING</p>
--	--

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:

DATE: 09/07/2007 TIME: 11:00 AM DEPARTMENT: 22

LOCATION: Administration Building, Fourth Floor
 1221 Oak Street, Oakland

Case Management Conference:

DATE: 10/15/2007 TIME: 02:00 PM DEPARTMENT: 22

LOCATION: Administration Building, Fourth Floor
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 4.2 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 22 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 272-6157. Please consult Appendix E to Local Rules 4 and 5 of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 22.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be

scheduled for hearing in Department 22.

If the information contained in this notice requires change or clarification, please call the courtroom clerk for Department 22 at (510) 272-6157.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CONFERENCE CALL SERVICES, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 527-7327, or faxing a service request form to (800) 833-5133. This service is subject to charges by the vendor.

Dated: 07/17/2007

Executive Officer / Clerk of the Superior Court

By


digital

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 07/17/2007.

By


digital

Deputy Clerk

Rosen, Bien & Asaro LLP
 Attn: Rosen, Sanford Jay
 315 Montgomery Street
 10th Floor
 San Francisco, CA 94104

Alderwoods Group, Inc.

Superior Court of California, County of Alameda
 Rene C. Davidson Alameda County Courthouse

Prise	No. RG07334642
Plaintiff/Petitioner(s)	
VS.	Minutes
Alderwoods Group, Inc.	
Defendant/Respondent(s)	
(Abbreviated Title)	

Department 22 Honorable Bonnie Sabraw, Judge

Cause called for: Complex Determination Hearing on September 07, 2007.

The matter was not reported.

There were no appearances; therefore, the Court affirms its tentative ruling.

The Court designates this case as complex pursuant to Rule 1800 et seq. of the California Rules of Court. The matter is assigned for all purposes to Department 22 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, section E to the Appendix to Chapters 4 and 5.

THE INITIAL CMC IS SET FOR 10/23/07 AT 3:00 PM IN DEPT 22. NOTE DATE AND TIME CHANGE.

Calendar information, filings, and tentative rulings are available to the public at <http://www.co.alameda.ca.us/domainweb/>.

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a just, speedy and economical determination of the litigation.

The CCMC statements must address the following issues:

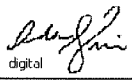
- A. A statement of the issues presented in the case, including each theory and defense, the facts supporting each position taken in the form of a brief factual summary assisting the Court in understanding the background of the case, the relief sought, including an estimate of damages, and the status of relevant discovery;
- B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;
- C. Deadlines and limits on joinder of parties and amended or additional pleadings;
- D. Class discovery and class certification; [added 06-14]
- E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;
- F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;
- G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:

- (1) unserved parties and the reasons for the failure to serve;
 - (2) unserved and/or unfiled cross-complaints;
 - (3) related actions pending in any jurisdiction and the potential for coordination or consolidation;
 - (4) any possible jurisdictional or venue issues that may arise;
 - (5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;
 - (6) unresolved law and motion matters;
 - (7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation, judicial or contractual arbitration;
 - (8) severance of issues for trial; and
 - (9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date; and
- H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel to streamline service of process, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

Notices will be mailed.

Minutes of 09/07/2007
Entered on 09/07/2007

Executive Officer / Clerk of the Superior Court

By 
digital Deputy Clerk

Rosen, Bien & Asaro LLP
 Attn: Rosen, Sanford Jay
 315 Montgomery Street
 10th Floor
 San Francisco, CA 94104

Alderwoods Group, Inc.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Prise <div style="text-align: right;">Plaintiff/Petitioner(s)</div> <div style="text-align: center;">VS.</div> Alderwoods Group, Inc. <div style="text-align: right;">Defendant/Respondent(s)</div> <div style="text-align: center;">(Abbreviated Title)</div>	No. <u>RG07334642</u> Order Complaint - Other Employment
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The Complex Determination Hearing was set for hearing on 09/07/2007 at 11:00 AM in Department 22 before the Honorable Bonnie Sabraw. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Court designates this case as complex pursuant to Rule 1800 et seq. of the California Rules of Court. The matter is assigned for all purposes to Department 22 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, section E to the Appendix to Chapters 4 and 5.

THE INITIAL CMC IS SET FOR 10/23/07 AT 3:00 PM IN DEPT 22. NOTE DATE AND TIME CHANGE.

Calendar information, filings, and tentative rulings are available to the public at <http://www.co.alameda.ca.us/domainweb/>.

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a just, speedy and economical determination of the litigation.

The CCMC statements must address the following issues:

- A. A statement of the issues presented in the case, including each theory and defense, the facts supporting each position taken in the form of a brief factual summary assisting the Court in understanding the background of the case, the relief sought, including an estimate of damages, and the status of relevant discovery;
- B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;
- C. Deadlines and limits on joinder of parties and amended or additional pleadings;
- D. Class discovery and class certification; [added 06-14]
- E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;
- F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;
- G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:

- (1) unserved parties and the reasons for the failure to serve;
 - (2) unserved and/or unfiled cross-complaints;
 - (3) related actions pending in any jurisdiction and the potential for coordination or consolidation;
 - (4) any possible jurisdictional or venue issues that may arise;
 - (5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;
 - (6) unresolved law and motion matters;
 - (7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation, judicial or contractual arbitration;
 - (8) severance of issues for trial; and
 - (9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date; and
- H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel to streamline service of process, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

Dated: 09/07/2007


facsimile

Judge Bonnie Sabraw

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG07334642
Order After Hearing Re: of 09/07/2007

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 09/07/2007.

Executive Officer / Clerk of the Superior Court

By  digital

Deputy Clerk

EXHIBIT C

Sanford Jay Rosen, State Bar No. 62566
 Maria V. Morris, State Bar No. 223903
 Lori E. Rifkin, State Bar No. 244081
 ROSEN, BIEN & GALVAN, LLP
 315 Montgomery Street, Tenth Floor
 San Francisco, CA 94104
 Telephone: (415) 433-6830
 Facsimile: (415) 433-7104
 srosen@rbg-law.com

ENDORSED
 FILED
 ALAMEDA COUNTY

SEP 4 2007

CLERK OF THE SUPERIOR COURT
 By **KMEL DRILLON**, Deputy

[Additional Counsel Listed on Following Page]

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

WILLIAM HELM, DEBORAH PRISE,
 HEATHER P. RADY, [see Complaint and
 Appendices for a listing of plaintiffs] et al., on
 behalf of themselves and all other employees
 and former employees similarly situated,

Plaintiffs,

v.

SERVICE CORPORATION
 INTERNATIONAL and
 ALDERWOODS GROUP, INC.,

Defendants.

Case No. RG07334642

CLASS ACTION

AMENDED COMPLAINT

- (1) VIOLATION OF CALIFORNIA
LABOR LAWS
- (2) FAILURE TO MAINTAIN PROPER
RECORDS
- (3) STATE WAGE AND HOUR LAWS
- (4) UNJUST ENRICHMENT/
RESTITUTION
- (5) CONVERSION
- (6) FRAUD AND DECEIT
- (7) MISREPRESENTATION
- (8) BREACH OF CONTRACT
- (9) BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR
DEALING
- (10) QUANTUM MERUIT
- (11) UNLAWFUL BUSINESS
PRACTICES

DEMAND FOR JURY TRIAL

1 Additional Attorneys for Plaintiffs, who will
2 submit applications for admission *pro hac vice*:

3 J. Nelson Thomas, NY Attorney No. 2579159
4 Patrick J. Solomon, NY Attorney No. 2716660
5 Michael J. Lingle, NY Attorney No. 3925765
6 Justin Cordello, NY Attorney No. 4131447
7 Annette Gifford, NY Attorney No. 4105870
8 DOLIN, THOMAS & SOLOMON LLP
9 693 East Avenue
10 Rochester, NY 14607
11 Telephone: (585) 272-0540
12 Facsimile: (585) 272-0574
13 nthomas@theemploymentattorneys.com

14 Charles H. Saul, PA State Bar No.19938
15 Liberty J. Weyandt, PA State Bar No. 87654
16 MARGOLIS EDELSTEIN
17 525 William Penn Place
18 Suite 3300
19 Pittsburgh, PA 15219
20 Telephone: (412) 281-4256
21 Facsimile: (412) 642-2380
22 csaul@margolisedelstein.com
23
24
25
26
27
28

1 **CLASS ACTION COMPLAINT**

2 **AND NOW** come plaintiffs, on behalf of themselves and all others similarly situated,
3 by and through their attorneys, Rosen, Bien & Galvan, LLP, Dolin, Thomas & Solomon LLP
4 and Margolis Edelstein, and file the following Class Action Complaint:

5 **I. INTRODUCTION**

6 1. This is a proceeding for declaratory and injunctive relief and monetary damages
7 to redress the deprivation of rights secured to plaintiffs individually, as well as all other
8 employees similarly situated, under the laws of California and other laws of the various States
9 in which defendants do business.

10 2. Plaintiffs' state law claims asserted herein were previously dismissed from the
11 United States District Court for the Western District of Pennsylvania on or about June 8, 2007
12 and have been tolled since that time pursuant to 28 U.S.C. § 1367, as well as the tolling rules
13 applied to class actions.

14 **II. JURISDICTION AND VENUE**

15 3. This Court has jurisdiction over defendants because defendants conduct business
16 in this State.

17 4. Venue as to each defendant is proper in this judicial district, pursuant to Code of
18 Civil Procedure § 395.5 and Corporations Code § 2105.

19 5. Upon information and belief, defendant Service Corporation International, Inc. is
20 a foreign corporation which has not obtained a certificate of qualification to do business in
21 California.

22 6. Upon information and belief, defendant Alderwoods Group, Inc. is a foreign
23 corporation which has obtained a certificate of qualification to do business in California, but
24 which has not designated a principal place of business within the State of California.

25 7. Venue is also proper in this judicial district because defendants maintain and
26 operate one or more business locations, transact business, and/or have agents in Alameda
27 County, as well as in other counties in the State of California, and are otherwise within this
28 Court's jurisdiction for purposes of service of process. Obligations and/or liabilities of the

1 defendants arose in this County because defendants have contracted to employ or have
2 employed plaintiffs in Alameda County, as well as in other counties in the State of California.
3 Some of the claims in this matter arose from contracts for employment which were to be
4 performed, at least in part, in Alameda County, as well as in other counties in the State of
5 California. Some of the unlawful acts alleged herein occurred in Alameda County, as well as
6 in other counties in the State of California, and have a direct effect on plaintiffs within
7 Alameda County and within the State of California.

8 **III. PARTIES**

9 **A. Plaintiffs**

10 8. The class members ("Class Members") are those employees and former
11 employees of defendants who were suffered or permitted to work by defendants and not paid
12 their regular or statutorily required rate of pay for all hours worked. Class Members expressly
13 include, among others, those identified in the caption, together with Appendix A and Appendix
14 B to this Complaint. As more fully set forth in paragraphs 3 and 7, which Class Members
15 incorporate by reference as if fully set forth herein, Class Members' claims are connected to
16 Alameda County as some of those claims arose from contracts to be performed in Alameda
17 County, some of the unlawful acts alleged herein occurred in Alameda County, and some of
18 those acts have a direct effect on Class Members within Alameda County.

19 **B. Defendants**

20 9. Defendant Service Corporation International ("SCI") is a corporation with its
21 headquarters being at 1929 Allen Parkway, Houston, Texas 77019, which does business in the
22 State of California, and in the County of Alameda.

23 10. Defendant Alderwoods Group, Inc. ("Alderwoods") is a corporation with its
24 headquarters being at 311 Elms Street, Suite 1000, Cincinnati, Ohio 45202, which does
25 business in the State of California, and in the County of Alameda.

26 11. Defendants maintain and operate one or more business locations, transact
27 business and/or have agents in Alameda County. Defendants' obligations and/or liabilities
28 arose in this County, defendants employ or have employed Class Members in Alameda

1 County, as well as in other counties in California. Defendants employed Class Members
2 pursuant to contracts for employment which were to be performed, at least in part, in Alameda
3 County, as well as in other counties in California. Some the unlawful acts alleged herein
4 occurred in Alameda County, as well as in other counties in the State of California, and have a
5 direct effect on Class Members within Alameda County and within the State of California.

6 12. At all relevant times, defendants have suffered or permitted Class Members to
7 perform work for them.

8 ***SCI Is Liable to All Class Members***

9 13. At all relevant times, defendant SCI has suffered or permitted Class Members to
10 perform work for it at its funeral service locations.

11 14. At all relevant times, defendant SCI is liable for the employment of Class
12 Members in this action. This includes liability for Class Members employed by SCI's
13 affiliates, including without limitation Alderwoods (the "SCI Affiliates").

14 15. Class Members are or have been employed by SCI and its funeral service
15 locations and/or have been jointly employed by SCI and Alderwoods and their funeral service
16 locations.

17 16. SCI operates locations, either directly or through the SCI Affiliates, and therefore
18 is the employer of Class Members who are or were employed at all locations.

19 17. At all relevant times, SCI and the SCI Affiliates have suffered or permitted Class
20 Members to perform work for them.

21 18. Business operations of the funeral service locations are centrally controlled by
22 SCI.

23 19. At all relevant times, SCI maintains centralized control of employment relations.

24 20. At all relevant times, the human resource functions of the funeral service
25 locations report directly or indirectly to SCI.

26 21. In addition to centralized control of employment relations, SCI exercises
27 common management of its various funeral service locations.
28

1 22. Further, SCI owns all of its funeral service locations and exercises financial
2 control over the business operations of those locations.

3 23. Class Members are informed and believe, and therefore allege, that SCI and the
4 SCI Affiliates operate interrelated business operations.

5 24. Class Members are informed and believe, and therefore allege, that SCI and the
6 SCI Affiliates exercise central control of labor relations.

7 25. Class Members are informed and believe, and therefore allege, that SCI and the
8 SCI Affiliates operate under common management.

9 26. Class Members are informed and believe, and therefore allege, SCI and the SCI
10 Affiliates have common ownership and financial control.

11 27. In light of the economic realities of the enterprise operated by SCI and the SCI
12 Affiliates, SCI is a joint employer of all Class Members for purposes of state laws.

13 28. Collectively, SCI and the SCI Affiliates, and all of their funeral service locations,
14 comprise a single, integrated enterprise, as they perform related activities through common
15 control for a common business purpose.

16 ***SCI and Alderwoods Are Liable to Class Members Employed by Alderwoods***

17 29. At all relevant times, defendants SCI and Alderwoods have suffered or permitted
18 Class Members to perform work for them. This includes Class Members employed by
19 Alderwoods's affiliates (the "Alderwoods Affiliates").

20 30. Class Members are or have been employed by SCI and Alderwoods and
21 Alderwoods's funeral service locations.

22 31. SCI and Alderwoods operate locations, either directly or through the Alderwoods
23 Affiliates, and therefore are the employer of Class Members who are or were employed at all
24 Alderwoods locations.

25 32. At all relevant times, the funeral service locations of Alderwoods and the
26 Alderwoods Affiliates have employed Class Members.

1 33. Class Members who are or have been employed by Alderwoods and/or its funeral
2 service locations have been jointly employed by SCI and Alderwoods and their funeral service
3 locations.

4 34. Class Members are informed and believe, and therefore allege, that Alderwoods,
5 through its shareholders, has adopted the merger agreement by and between Alderwoods and
6 SCI (collectively, "Merged Entities").

7 35. Class Members are informed and believe, and therefore allege, that the Merged
8 Entities, under the merger agreement, continue business operations in substantially the same
9 form as before the merger.

10 36. Class Members are informed and believe, and therefore allege, that the Merged
11 Entities, under the merger agreement, continue to use substantially the same workforce as
12 before the merger, with substantially the same supervisors and same working conditions.

13 37. Class Members are informed and believe, and therefore allege, that the Merged
14 Entities, under the merger agreement, provide essentially the same services as before the
15 merger and use the same facilities, equipment and method of providing services.

16 38. Class Members are informed and believe, and therefore allege, that thus, SCI is a
17 successor-in-interest to defendant Alderwoods's liability.

18 39. Class Members are informed and believe, and therefore allege, that the Merged
19 Entities, under the merger agreement, operate interrelated business operations.

20 40. Class Members are informed and believe, and therefore allege, that the Merged
21 Entities exercise central control of labor relations.

22 41. Class Members are informed and believe, and therefore allege, that the Merged
23 Entities operate under common management.

24 42. Class Members are informed and believe, and therefore allege, that the Merged
25 Entities have common ownership and financial control.

26 43. In light of the economic realities of the Merged Entities' enterprise, defendants
27 are joint employers of Class Members for purposes of state laws.
28

1 44. Collectively, defendants named herein and all of their funeral service locations
2 comprise a single, integrated enterprise, as they perform related activities through common
3 control for a common business purpose.

4 45. Business operations of the Alderwoods funeral service locations are centrally
5 controlled by SCI and Alderwoods.

6 46. At all relevant times, SCI and Alderwoods maintained centralized control of
7 employment relations at the Alderwoods funeral service locations.

8 47. At all relevant times, the human resource functions of the Alderwoods funeral
9 service locations report directly or indirectly to SCI and Alderwoods.

10 48. In addition to centralized control of employment relations, Alderwoods and SCI
11 exercise common management of the Alderwoods funeral service locations.

12 49. Further, Alderwoods and SCI own all of the Alderwoods funeral service
13 locations and exercise financial control over the business operations of those locations.

14 **IV. CLASS ACTION ALLEGATIONS**

15 50. The claims arising under the state wage laws set forth below are properly
16 maintainable as a class action under Cal. Civ. Proc. § 382.

17 51. Class Members are those employees and former employees of defendants who
18 were suffered or permitted to work by defendants and not paid their regular or statutorily
19 required rate of pay for all hours worked.

20 52. The class size is believed to be over 10,000 employees, a significant percentage
21 of whom are within California.

22 53. Common questions of law and fact predominate in this action because the claims
23 of all Class Members are based on whether defendants' practice of not paying nonexempt
24 employees their regular or statutorily required rate of pay for all hours worked violates
25 California state law and the state laws of the various other states in which defendants do
26 business.

27 54. Common questions of law and fact include, but are not limited to, the following:

28 a. Whether Class Members are entitled to payment for all of the time they

1 worked for defendants.

- 2 b. Whether Class Members are entitled to payment at overtime rates for all of
3 the time they worked for defendants in excess of 40 hours per week and/or in
4 excess of 8 hours per day.
- 5 c. Whether defendants' employment policies violated defendants' legal
6 obligation to pay Class Members for all of the time they worked for
7 defendants.
- 8 d. Whether defendants' employment policies violated defendants' legal
9 obligation to pay Class Members at overtime rates for all of the time they
10 worked for defendants in excess of 40 hours per week and/or in excess of 8
11 hours per day.
- 12 e. Whether defendants failed to maintain proper and accurate records regarding
13 Class Members' employment.

14 55. The named plaintiffs' claims are typical of, and concurrent to, the claims of Class
15 Members, because they are similarly situated. The named plaintiffs and all Class Members
16 were subjected to defendants' policies and practices of failing to compensate employees for
17 overtime work.

18 56. The named plaintiffs will fairly and adequately represent and protect the interests
19 of Class Members. The class counsel, Rosen, Bien & Galvan, LLP, Dolin, Thomas &
20 Solomon LLP and Margolis Edelstein, are qualified and able to litigate Class Members'
21 claims. The class counsel are experienced in employment litigation, and their attorneys are
22 experienced in class action litigation, including class actions arising under federal and state
23 wage and hour laws.

24 57. There are no known conflicts of interest between and among Class Members.

25 58. A class action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all Class Members is not practicable,
27 and questions of law and fact common to the Class predominate over any questions affecting
28 only individual members of the Class. Each Class Member has been damaged and is entitled
to recovery by reason of defendants' illegal policy and/or practice of permitting, suffering,
and/or failing to pay employees their regular or statutorily required rate of pay for all hours

1 worked. Class action treatment will allow those similarly situated persons to litigate their
2 claims in the manner that is most efficient and economical for the parties and the judicial
3 system.

4 **V. FACTUAL BACKGROUND**

5 59. Class Members are those employees and former employees of defendants who
6 were suffered or permitted to work by defendants and not paid their regular or statutorily
7 required rate of pay for all hours worked.

8 60. Defendants' policy and/or practice was to not compensate Class Members their
9 regular or statutorily required rate of pay for work defendants suffered or permitted Class
10 Members to perform.

11 61. Defendants knew Class Members were supposed to receive such wages,
12 however, defendants willfully failed to pay for all hours when Class Members worked.

13 62. Defendants' practice is to be deliberately indifferent to violations of the statutory
14 overtime requirements.

15 63. The failure to pay overtime is willful.

16 64. Examples of defendants' policies and practices to deprive Class Members of
17 their earned wages and wage premiums are set forth below:

18 a. Defendants implemented a "Community Work Policy." Under the policy,
19 defendants suffered or permitted their employees to perform "Community
20 Work" so as to increase revenues for defendants. Defendants did not
21 compensate the employees for such time spent in Community Work in
22 furtherance of the employer's business under the "Community Work Policy."

22 b. Defendants implemented an "On Call Pay Policy." Under the policy,
23 employees were suffered or permitted to perform work by handling calls and
24 other work related issues after normal business hours, but defendants would
25 not compensate employees for work performed outside the regular workday,
26 off-site from the funeral home.

25 c. Defendants' policy required that certain hourly employees train for and obtain
26 certain licenses. Defendants did not pay for the training, test taking and
27 continuing education requirements for those licenses despite suffering or
28 permitting employees to perform such work.

d. Defendants' policy required that certain hourly employees take other types of

1 training. Defendants did not pay for such training, despite suffering or
2 permitting employees to perform such work.

- 3 e. Defendants implemented a "Pre-Needs Appointment Policy." Defendants
4 suffered or permitted employees to meet with clients to discuss pre-need
5 purchases. To the degree that such appointments were beyond the
6 employees' schedule, the employees were suffered or permitted to continue
7 the appointments, but were not to be paid for such time worked under the
8 "Pre-Needs Appointment Policy." Defendants' management would
9 sometimes attempt to justify this policy on the grounds that the employee
10 would likely receive a commission if the client purchased a pre-needs
11 product.
- 12 f. Defendants implemented a "Meal Break Deduction Policy." Under the
13 policy, defendants no longer paid for lunch breaks. Defendants did, however,
14 suffer and permit its employees to perform work during such meal breaks, but
15 pursuant to defendant's "Meal Break Deduction Policy" time spent on meal
16 "breaks" was still to be deducted from the employee's pay even when
17 defendants suffered or permitted work to be performed during such "breaks."
- 18 g. Defendants implemented a "Pre-Approval for Overtime Pay Policy." Under
19 this policy, defendants only permitted payments for overtime if the overtime
20 was pre-approved. Defendants suffered or permitted their employees to work
21 overtime and therefore, the employees were entitled to overtime payments.
22 However, defendants refused to make the legally required payments because
23 the time was not "pre-approved" as required under the "Pre-Approval for
24 Overtime Pay Policy."
- 25 h. Defendants implemented an "Unrecorded Work Time Policy." Under this
26 policy, defendants suffered or permitted Class Members to perform work, but
27 directed that such work not be recorded. Defendants then refused to pay for
28 the time worked under the "Unrecorded Work Time Policy" because, even
though defendants knew that such time had been worked, it had not been
"recorded."
- i. Defendants' policy was to not include all remuneration (such as bonuses and
commissions) in the calculation of the Class Members' overtime.

65. Defendants also failed to make, keep and preserve adequate and accurate records
of the employment of Class Members concerning their wages, hours and other conditions of
employment.

66. More specifically, the records kept by defendants failed to adequately and accurately disclose among other things, hours worked each work day, the total hours worked each work week and/or the total overtime compensation for each work week.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR LAWS (by all plaintiffs against all defendants)

67. Class Members hereby incorporate by reference paragraphs 1 through 66 of this Complaint as if fully set forth herein.

Failure to Pay Overtime Compensation

68. Defendants willfully violated their obligations under California law, including those under California Labor Code § 1194, *et seq.*, by failing to pay Class Members the legal overtime compensation applicable to Class Members.

69. As a direct and proximate cause of defendants' actions, Class Members have suffered damages.

Failure to Immediately Pay Wages Upon Discharge/Layoff/Resignation

70. Defendants willfully violated their obligations under California law, including those under California Labor Code § 201, *et seq.*, by willfully failing to pay Class Members who have been discharged or laid off all wages earned and unpaid at the time of discharge or layoff.

71. Defendants willfully violated their obligations under California law, including those under California Labor Code § 202, *et seq.*, by willfully failing to pay Class Members who have resigned all wages earned and unpaid at the time of resignation, or within 72 hours thereafter.

72. Defendants did not pay Class Members who were discharged, were laid off or resigned their regular or statutorily required rate of pay for all hours worked, as required by California law. Defendants' failure to pay those amounts is ongoing.

73. As a direct and proximate cause of defendants' actions, Class Members have suffered damages.

74. Defendants are liable to Class Members for civil penalties, pursuant to California Labor Code § 203, in the amounts set forth therein.

Failure to Provide Required Meal and Rest Periods

75. Defendants willfully violated their obligations under California law, including those under California Labor Code §§ 226.7 and 512, *et seq.*, by willfully failing to provide Class Members with legally required meal and rest periods.

76. Defendants repeatedly and regularly interrupted Class Members' meal and rest periods and/or required Class Members to forego their meal and rest periods.

77. Defendants failed to compensate Class Members for missed meal and rest breaks.

78. As a direct and proximate cause of defendants' actions, Class Members have suffered damages.

Failure to Furnish Timely and Accurate Wage Statements

79. Defendants willfully violated their obligations under California law, including those under California Labor Code §§ 226(a) and 226.3, *et seq.*, by willfully failing to provide Class Members with timely and accurate wage statements as required by California law.

80. As a direct and proximate cause of defendants' actions, Class Members have suffered damages.

81. Wherefore, Class Members request relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO MAINTAIN PROPER RECORDS (by all plaintiffs against all defendants)

82. Class Members hereby incorporate by reference paragraphs 1 through 81 of this Complaint as if fully set forth herein.

83. Defendants willfully violated their obligations under California law, including those under California Labor Code § 1174, *et seq.*, by failing to make, keep, and preserve adequate and accurate records of the employment of Class Members concerning their wages, hours and other conditions of employment; more specifically, the records kept by defendants failed to adequately and accurately disclose among other things, hours worked each work day,

1 the total hours worked each work week, and/or the total overtime compensation for each work
2 week.

3 84. Defendants are liable to Class Members for civil penalties, pursuant to California
4 Labor Code §§ 1174.5 and 2698, *et seq.*, in the amounts set forth therein.

5 85. Wherefore, Class Members request relief as described below.

6 **THIRD CAUSE OF ACTION**

7 **STATE WAGE AND HOUR LAWS (by all plaintiffs against all defendants)**

8 86. Class Members hereby incorporate by reference paragraphs 1 through 85 of this
9 Complaint as if fully set forth herein.

10 87. Defendants willfully violated their obligations to properly compensate Class
11 Members under the wage laws of the states in which defendants do business including:

- 12 a. Alaska Stat. § 23.10.050, *et seq.*;
- 13 b. Arizona Rev. Stat. § 23-201, *et seq.*;
- 14 c. Arkansas Code § 11-4-201, *et seq.*;
- 15 d. Colorado Rev. Stat. § 8-6-101, *et seq.*; Colorado Code Regs. § 1103-1, *et*
16 *seq.*;
- 17 e. Connecticut Gen. Stat. § 31-58, *et seq.*;
- 18 f. 820 Illinois Comp. Stat. 105/1, *et seq.*; 820 Illinois Comp. Stat. 105/12(a);
19 820 Illinois Comp. Stat. 115/1, *et seq.*;
- 20 g. Indiana Code § 22-2-2-1, *et seq.*; Indiana Code § 22-2-2-4, *et seq.*; Indiana
21 Code § 22-2-5-1, *et seq.*; Indiana Code § 22-2-9-2, *et seq.*;
- 22 h. Kansas Stat. § 44-1201, *et seq.*;
- 23 i. Louisiana Rev. Stat. § 23:631, *et seq.*;
- 24 j. Maryland Code, Lab. & Empl. § 3-401, *et seq.*;
- 25 k. Massachusetts Gen. Laws Ch. 151, § 1, *et seq.*; Massachusetts Gen. Laws
26 Ch. 149, § 148, *et seq.*; Massachusetts Gen. Laws Ch. 149, § 100, *et seq.*;
- 27 l. Michigan Comp. Laws § 408.381, *et seq.*;
- 28 m. Minnesota Stat. § 177.21, *et seq.*; Minnesota Stat. § 181.13, *et seq.*;

- n. Montana Code § 39-3-401, *et seq.*;
- o. Nevada Rev. Stat. § 608.005, *et seq.*;
- p. New Jersey Stat. § 34.11-56a, *et seq.*;
- q. New Mexico Stat. § 50-4-1, *et seq.*;
- r. New York Lab. Law § 160, *et seq.*;
- s. North Carolina Gen. Stat. § 95-25.1, *et seq.*;
- t. Ohio Rev. Code § 4111.01, *et seq.*;
- u. Oregon Rev. Stat. § 653.005, *et seq.*;
- v. 43 Pennsylvania Stat. § 333.101, *et seq.*; 43 Pennsylvania Stat. § 206.3, *et seq.*;
- w. 29 Laws of Puerto Rico §250, *et seq.*;
- x. Rhode Island Gen. Laws § 28-12-1, *et seq.*;
- y. South Carolina Code § 41-10-10, *et seq.*;
- z. Washington Rev. Code § 49.46.005, *et seq.*;
- aa. West Virginia Code § 21-5C-1, *et seq.*;
- bb. Wisconsin Stat. § 104.001, *et seq.*

88. As a direct and proximate cause of defendants' violations of these statutes, Class Members have suffered damages.

89. Wherefore, Class Members request relief as described below.

FOURTH CAUSE OF ACTION

UNJUST ENRICHMENT/RESTITUTION (by all plaintiffs against all defendants)

90. Class Members hereby incorporate by reference paragraphs 1 through 89 of this Complaint as if fully set forth herein.

91. Defendants have received financial gain at the expense of Class Members.

92. Defendants have received that financial gain under such circumstances that, in equity and good conscience, defendants ought not to be allowed to profit at the expense of Class Members.

93. Defendants' willful failure to pay overtime wages for work performed for defendants has unjustly enriched defendants to the detriment of Class Members. As a result of this conduct, the common laws and state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia, imply a contract obligating defendants to make restitution to Class Members, in the amount by which, in equity and good conscience, defendants have been unjustly enriched.

94. As a direct and proximate cause of defendants' actions, Class Members have suffered damages.

95. Wherefore, Class Members request relief as described below.

FIFTH CAUSE OF ACTION

CONVERSION (by all plaintiffs against all defendants)

96. Class Members hereby incorporate by reference paragraphs 1 through 95 of this Complaint as if fully set forth herein.

97. At all relevant times, defendants had and continued to have a legal obligation to pay Class Members all earnings and overtime due. The wages belong to Class Members as of the time the labor and services were provided to defendants and, accordingly, the wages for services performed are the property of the Class Members.

98. In refusing to pay wages and overtime to Class Members, defendants knowingly, unlawfully and intentionally took, appropriated and converted the wages and overtime earned by Class Members for defendants' own use, purpose and benefit. At the time the conversion took place, Class Members were entitled to immediate possession of the amount of wages and

1 overtime earned. As a result, Class Members have been denied the use and enjoyment of their
2 property and have been otherwise damaged in an amount to be proven at trial. This conversion
3 was willful, oppressive, malicious, and fraudulent and/or done with conscious disregard of the
4 rights of the Class Members. This conversion was concealed from Class Members.

5 99. Defendants willfully violated their obligations under the common laws and the
6 state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida,
7 Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts,
8 Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico,
9 New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode
10 Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia and
11 are liable to Class Members.

12 100. As a result of defendants' actions, Class Members were damaged and are entitled
13 to all funds converted by defendants with interest thereon, all profits resulting from such
14 conversion, and punitive or exemplary damages.

15 101. Wherefore, Class Members request relief as described below.

16 **SIXTH CAUSE OF ACTION**

17 **FRAUD AND DECEIT (by all plaintiffs against all defendants)**

18 102. Class Members hereby incorporate by reference paragraphs 1 through 101 of this
19 Complaint as if fully set forth herein.

20 103. Defendants, through their corporate publications and through statements of their
21 agents, represented that wages would be paid legally and in accordance with defendants'
22 obligations pursuant to applicable federal and state laws. Some examples include defendants'
23 statements in their policy manuals that "[a]ll non-exempt employees will be compensated for
24 all hours worked" and that defendants "will comply with all applicable federal, state and local
25 laws. If any of the provisions of this policy conflict with any federal, state or local laws or
26 regulations, then the laws or regulations will supersede the Company's policy in those specific
27 locations."
28

1 104. Defendants, however, at all times intended to violate applicable federal and state
2 laws by failing to pay Class Members their regular or statutorily required rate of pay for all
3 hours worked.

4 105. These misrepresentations were material to the terms of Class Members'
5 employment contracts, and Class Members relied on the misrepresentations in agreeing to
6 accept and continue employment with defendants. This reliance was reasonable, as Class
7 Members had every right to believe that defendants would abide by their obligations pursuant
8 to applicable federal and state law.

9 106. Defendants willfully violated their obligations by committing fraud against Class
10 Members under the common laws and the state laws of Alabama, Alaska, Arizona, Arkansas,
11 California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas,
12 Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska,
13 Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon,
14 Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia,
15 Washington, and West Virginia and are liable to Class Members.

16 107. As a direct and proximate cause of the fraud committed by defendants, Class
17 Members did not receive the statutorily mandated wages for overtime and suffered damages.

18 108. Defendants acted maliciously when they committed the wrongful acts which
19 constitute this cause of action such that it warrants the imposition of punitive and exemplary
20 damages.

21 109. Wherefore, Class Members request relief as described below.

22 **SEVENTH CAUSE OF ACTION**

23 **MISREPRESENTATION (by all plaintiffs against all defendants)**

24 110. Class Members hereby incorporate by reference paragraphs 1 through 109 of this
25 Complaint as if fully set forth herein.

26 111. In particular, Class Members incorporate and refer to paragraphs 103 through
27 105 above, regarding the material misrepresentations made by defendants.

112. When defendants hired Class Members, they represented to Class Members that they would be fully compensated for all services performed, as more fully set forth above.

113. There was no reasonable basis for defendants to believe these representations because defendants had a continuing practice and policy of failing to pay their employees their regular or statutorily required rate of pay for all hours worked.

114. Class Members relied upon defendants' representations by performing work and services for defendants. This reliance was reasonable, as Class Members had every right to believe that defendants would abide by their obligations pursuant to applicable federal and state law.

115. Defendants willfully violated their obligations under the common laws and the state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia by misrepresenting to Class Members that they would be fully compensated for all services performed and are liable to Class Members.

116. As a result of their reliance upon defendants' misrepresentations, Class Members suffered damages because they were not appropriately compensated with the regular or statutorily required rate of pay for all hours worked.

117. As a direct and proximate result of defendants' negligent misrepresentation, Class Members suffered damages.

118. Wherefore, Class Members request relief as described below.

EIGHTH CAUSE OF ACTION

BREACH OF CONTRACT (by all plaintiffs against all defendants)

119. Class Members hereby incorporate by reference paragraphs 1 through 118 of this Complaint as if fully set forth herein.

1 120. By entering into an employment relationship, defendants and each Class Member
2 entered into a contract for employment.

3 121. Each such contract included an implied or express term that defendants agreed to
4 fulfill all of their obligations pursuant to applicable state and federal law.

5 122. Defendants willfully breached the implied contract term by failing to pay Class
6 Members for all of the time Class Members worked and by failing to pay Class Members their
7 regular or statutorily required rate of pay for all hours worked.

8 123. Defendants willfully violated their obligations under the common laws and the
9 state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida,
10 Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts,
11 Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico,
12 New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode
13 Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia and
14 are liable to Class Members.

15 124. As a direct and proximate cause of defendants' breach of their contracts with
16 Class Members, Class Members have suffered damages.

17 125. Wherefore, Class Members request relief as described below.

18 **NINTH CAUSE OF ACTION**

19 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
20 **(by all plaintiffs against all defendants)**

21 126. Class Members hereby incorporate by reference paragraphs 1 through 125 of this
22 Complaint as if fully set forth herein.

23 127. The unwritten contract for at-will employment between Class Members and
24 defendants contained an implied covenant of good faith and fair dealing, which obligated
25 defendants to perform the terms and conditions of the employment contract fairly and in good
26 faith and to refrain from doing any act that would violate any state or federal law governing the
27 employment relationship or any act that would deprive Class Members of the benefits of the
28 contract.

1 128. Defendants breached the implied covenant of good faith and fair dealing by
2 failing to pay Class Members the wages and overtime that was due to Class Members.

3 129. Defendants willfully violated their obligations under the common laws and the
4 state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida,
5 Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts,
6 Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico,
7 New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode
8 Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia and
9 are liable to Class Members.

10 130. As a direct and proximate cause of defendants' breach of the implied covenant of
11 good faith and fair dealing, Class Members have suffered damages.

12 131. Wherefore, Class Members request relief as described below.

13 TENTH CAUSE OF ACTION

14 **QUANTUM MERUIT (by all plaintiffs against all defendants)**

15 132. Class Members hereby incorporate by reference paragraphs 1 through 131 of this
16 Complaint as if fully set forth herein.

17 133. Defendants willfully violated their obligations by failing to pay Class Members
18 for the reasonable value of the services performed by Class Members for defendants under the
19 common laws and the state laws of Alabama, Alaska, Arizona, Arkansas, California, Colorado,
20 Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland,
21 Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey,
22 New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto
23 Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West
24 Virginia and are liable to Class Members under quantum meruit.

25 134. As a direct and proximate cause of defendants' failure to pay Class Members for
26 the reasonable value of services performed by Class Members for defendants, Class Members
27 suffered damages.

28 135. Wherefore, Class Members request relief as described below.

ELEVENTH CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES (by all plaintiffs against all defendants)

136. Class Members hereby incorporate by reference paragraphs 1 through 135 of this Complaint as if fully set forth herein.

137. Defendants' failure to pay Class Members for all time worked constitutes unfair competition and unlawful, unfair, and fraudulent business acts and practices in violation of California Business and Professional Code § 17200, *et seq.*

138. The conduct of defendants in failing to pay Class Members for all time worked constitutes and was intended to constitute unfair competition and unlawful unfair and fraudulent business acts and practices within the meaning of California Business and Professional Code § 17200, *et seq.*

139. As a result of defendants' violations of California Business and Professional Code § 17200, *et seq.*, defendants have unjustly enriched themselves at the expense of Class Members.

140. To prevent their unjust enrichment, defendants should be required, pursuant to California Business and Professional Code §§ 17203 and 17204, to disgorge their illegal gains for purpose of making full restitution to all injured Class Members. Defendants should also be permanently enjoined from continuing their violations of California Business and Professional Code § 17200, *et seq.*

141. Defendants willfully violated their obligations under the California Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*) and are liable to Class Members.

142. Wherefore, Class Members request relief as described below.

PRAYER FOR RELIEF

WHEREFORE, Class Members demand judgment against defendants in their favor and that they be given the following relief:

- (a) an order preliminarily and permanently restraining defendants from engaging in the aforementioned pay violations;

- 1 (b) an award of the value of Class Members' unpaid wages;
2 (c) liquidated, compensatory, consequential and punitive damages;
3 (d) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred
4 in vindicating Class Members' rights;
5 (e) an award of pre- and post-judgment interest; and
6 (f) such other and further legal or equitable relief as this Court deems to be just and
7 appropriate.

8 **JURY DEMAND**

9 Class Members demand a jury to hear and decide all issues of fact.

10 Respectfully Submitted,

11 ROSEN, BIEN & GALVAN, LLP
12

13 Date: September 4, 2007

14 By: Maria Morris

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Attorneys for Plaintiffs

APPENDIX A

Due to local rules requiring that the caption fit onto a single page, not all plaintiffs have been listed in the caption.

ROBERT CHERNETSKY, JEFFREY AYDELOTTE, ROBERT JONES, JAMES STICKLE, HENRY KLEIN, STACEY WEINSTEIN, JEFFREY SACHS, JOHNNY COLEMAN, JOHN KEATH, CHAD WICKHAM, CLAYTON CALLOWAY, EMILY MADDEN, LORI PHOENIX, JAMES CROUCH, JOHNNY JOHNSON, RICKIE HAMILTON, SANDY THOMAS, ROGER HUGO, ROBERT SHAW, BETTY KNIGHT, STEPHANIE RIGGS, CLAUDINE YOUNG, LARRY HAMMOCK, STEVEN TILLER, STROTHER FULCHER, MARY HOLDEN, JAMES STARK

APPENDIX B

Due to local rules requiring that the caption fit onto a single page, not all plaintiffs have been listed in the caption.

Consent forms are attached in this Appendix for the following individuals:

ROBERT A. ACEVEZ, FREDERICK R. ALDRICH, MERLIN ALEXANDER, KENNETH R. ALLEN, ELIAS ALVIDREZ, STEVEN A. ARNOLD, JAMES A. BAASCH, ROBERT BOWEN, MICHELE BREINDEL, MARC BROOKS, LAWRENCE F. CAMP, WILLIAM CASTELLARIN, DEBBIE K. CHATMAN (BRANDT), COREY W. CLARY, KATHRYN COSPER, DIANE CRAIG, JEFFREY A. DIGGS, KATHRYN DILDY, LOUIE DOMINGUEZ, MARC A. DUMONT, JAMES C. DURDEN, SCOTT J. ECKERT, STEPHEN ESCOBAR, LARRY FAIR, JOHN R. FERGUSON, DARIN D. FORAN, ROBERT IDEMOTO, KENNETH GIACONE, ELIZABETH M. GRANT, JUDONA M. GREEN, WILLIAM O. GWYN, LINDA T. HAGERTY, DOUGLAS HAZEN, CARRIE HENDERSON, JAMES HENDERSON, BERNARD M. HIRREL, JAMES HOLDER, RHAELYN HOLLAND, WILLIAM HUDSON III, JULIUS E. JOHNSON, WILTON KING, EDDIE KIRKPATRICK, W. SCOTT KOLWYCK, RONALD LANGLEY, FRANK LEWIS, CHARLES LOWTHER, SARAH MALMI, STEVEN L. MARTZ, EUGENIA C. MATTHEWS, NICK MCFERRAN, PAUL D. MEIZLER, HAROLD E. METCALF, MICHAEL NAPERASKY, MARVIN L. NEVEU, SEAN J. OBERSKI, RICHARD E. PETERSEN, STEVEN PIERCE, J.D. POOL, MELISSA RAY, JACK L. REDDICK, DENNIS ROBERTSON, RICHARD E. SALHUS, JOHN SCHABLOSKI, DAVID SCHNELL, WARREN L. SEIZ, WILLIAM H. SHUFF, MARK SILEO, HOLLY SLAMOWITZ, MYRA S. SLOAN, MONECIA SMITH, JODY P. SPIESE, MIKAL STAMPKE, FRANCIS STEINHOFF, GREGORY STUMP, TORREY SUMMERS, WILLIAM T. SUTTER III, JOSEPH G. TAFOYA JR., STEPHEN TAKESIAN, JERRY TAWNEY, TORI TAYLOR, PHILIP R. TILLMAN, FLORINDA D. TREJO, GAYLE WALKER, DAVID W. WALLACE, ERIC WALLAND, JAMES WHALEY, GEORGE T. WHITE, BARRY WIEN, DAVID WYATT, JOHN S. ZALESKI

EXHIBIT D

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Attorneys for Defendants
ALDERWOODS GROUP, INC. and
SERVICE CORPORATION INTERNATIONAL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Deborah Prise, et al., on behalf of
themselves and all other employees
similarly situated,

Plaintiffs,

vs.

Alderwoods Group, Inc., et al.

Defendants.

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DECLARATION OF JUDITH MARSHALL

1 I, Judith Marshall, declare and state as follows:

2 1. I am employed by SCI Funeral & Cemetery Purchasing Cooperative,
3 Inc. (the "Cooperative") in the position of Senior Legal Assistant. The following is
4 based on records maintained in the ordinary course of business and, if called upon
5 to do so, I could and would testify competently thereto.

6 2. As part of my job duties, I made an inquiry to the Cooperative's
7 Human Resources Department regarding the number of current employees who
8 hold non-exempt positions. As of September 1, 2007, Alderwoods Group, Inc. and
9 Service Corporation International's subsidiaries collectively employed
10 approximately 15,966 non-exempt employees in the United States.

11 This declaration is made in accordance with 28 U.S.C. § 1746 and I declare
12 under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct.

14 October 3, 2007

15 
16 Judith Marshall

17 COI-1377527v1
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF PLACER:

I am a citizen of the United States. My business address is 2240 Douglas Boulevard, Suite 150, Roseville, California 95661. I am employed in the County of Placer where this mailing occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served the foregoing document(s) described as:

1.	DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT
----	--

on said date at my place of business, a true copy thereof enclosed in a sealed envelope prepaid for first-class mail for collection and mailing that same day in the ordinary course of business, addressed to the parties as follows:

Sanford Jay Rosen
Rosen, Bien & Galvan, LLP
315 Montgomery Street, Tenth Floor
San Francisco, CA94014
415-433-6830
415-433-7104

Amy E. Dias
Jones Day
500 Grant Street, Suite 3100
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412-394-7959

J. Nelson Thomas
Dolin, Thomas & Solomon LLP
693 East Avenue
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585-272-0540
585-272-0574

Matthew W. Lampe
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Post Office Box 165017
Columbus, OH 43216-5017
614-469-3939
614-461-4198

Charles H. Saul
Margolis Edelstein
525 William Penn Place, Suite 3300
Pittsburg, PA 15219

Attorneys for Defendant

Attorneys for Plaintiff

☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Roseville, California.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).

☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

☐ (BY ELECTRONIC TRANSMISSION) I caused such document(s) to be sent electronically to the above named at the e-mail addresses indicated.

1 [X] (STATE) I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct.

3 Executed on October 5, 2007, at Roseville, California.

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5 CANDACE NELSON
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